

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 FELICITAS ZAMBRANO,) Case No. 2:16-cv-01659-GMN-NJK
11 Plaintiff(s),) ORDER
12 vs.)
13 CARDENAS MARKETS, INC.,) (Docket No. 20)
14 Defendant(s).)
15 _____)

16 Pending before the Court is Plaintiff's motion to compel discovery or to amend the complaint.
17 Docket No. 20. Defendant filed a response in opposition, and Plaintiff filed a reply. Docket Nos. 26,
18 27. The undersigned finds the motions properly resolved without oral argument. *See* Local Rule 78-1.
19 For the reasons discussed more fully below, the motion to amend the complaint is **GRANTED** and the
20 motion to compel discovery is **DENIED** without prejudice.

21 **I. BACKGROUND**

22 Plaintiff alleges that she slipped on a liquid substance inside a Cardenas Supermarket. Docket
23 No. 1-2. Plaintiff filed suit in state court, bringing a single cause of action for negligence. *See id.*
24 Defendant removed the case to federal court on the basis of diversity jurisdiction. *See* Docket No. 1.
25 The current dispute is whether certain discovery is relevant to the negligence claim as currently alleged
26 and/or whether Plaintiff should be permitted to allege a new claim that Defendant negligently hired,
27 trained and supervised its employees, and to allege the additional fact that the flooring was defective.
28 The Court finds it appropriate to address the motion for leave to amend first.

1 **II. STANDARDS**

2 When a party moves to amend the pleadings after the expiration of the deadline established in
 3 the scheduling order, courts review the request through a two-step process. First, courts resolve the
 4 motion to amend the scheduling order, which is governed by the “good cause” standard outlined in Rule
 5 16(b) of the Federal Rules of Civil Procedure. *See, e.g., Johnson v. Mammoth Recreations, Inc.*, 975
 6 F.2d 604, 608 (9th Cir. 1992). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence
 7 of the party seeking the amendment.” *Id.* at 609. In particular, courts look to whether the deadline set
 8 in the scheduling order “cannot reasonably be met despite the diligence of the party seeking the
 9 amendment.” *Id.* “[C]arelessness is not compatible with a finding of diligence and offers no reason for
 10 a grant of relief.” *Id.* Although prejudice to the opposing party may also be considered, the focus of the
 11 inquiry is on the movant’s reasons for seeking modification. *Id.* “If that party was not diligent, the
 12 inquiry should end.” *Id.* The party seeking amendment bears the burden of establishing diligence. *See,*
 13 *e.g., Morgal v. Maricopa County Bd. Of Sup ’rs*, 284 F.R.D. 452, 460 (D. Ariz. 2012).

14 When “good cause” has been established under Rule 16(b), courts will then examine whether
 15 amendment is proper under the standards outlined in Rule 15(a). Rule 15(a) provides that “[t]he court
 16 should freely give leave [to amend] when justice so requires,” and there is a strong public policy in favor
 17 of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). As such, the Ninth
 18 Circuit has made clear that Rule 15(a) is to be applied with “extreme liberality.” *Eminence Capital, LLC*
 19 *v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*). Under Rule 15(a), courts consider
 20 various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility
 21 of the amendment; and (5) whether the plaintiff has previously amended the complaint. *See id.* at 1052.
 22 These factors do not carry equal weight, however, and prejudice is the touchstone of the analysis. *See*
 23 *id.* The party opposing the amendment bears the burden of showing why leave to amend should be
 24 denied. *See, e.g., Desert Protective Council v. U.S. Dept. of the Interior*, 927 F. Supp. 2d 949, 962 (S.D.
 25 Cal. 2013) (citing *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989)).

26 **III. ANALYSIS**

27 Plaintiff’s pending motion for leave to amend was filed initially on November 3, 2016. *See*
 28 Docket No. 19. The deadline to amend the pleadings expired on October 12, 2016. *See* Docket No. 9.

1 Hence, Plaintiff filed the motion to amend the complaint roughly three weeks after expiration of the
 2 subject deadline, and the motion includes an implicit request to modify the scheduling order.

3 Defendant argues that the untimeliness of this motion dooms it. In particular, Defendant notes
 4 that the underlying discovery dispute giving rise to the request to amend arose as of September 22, 2016,
 5 and the parties held a meet-and-confer on that dispute on October 10, 2016. *See Docket No. 26 at 14-15.*
 6 Defendant also notes that stipulations for extensions were filed during this period that did not request
 7 an extension of the deadline to amend the pleadings. *See id.* at 15. Plaintiff responds that the timing
 8 of her motion is explained by the circumstances of the discovery dispute. In particular, Plaintiff argues
 9 that she diligently pursued discovery and obtained important documents that had been unavailable to her.
 10 *See Docket No. 27 at 11.* She further contends that she diligently proceeded with seeking leave to
 11 amend once the new claims were discovered. *See id.; see also Docket No. 20 at 6-7, 17.* Moreover,
 12 Plaintiff's motion is primarily in response to Defendant's contention in disputing discovery that her
 13 claims as initially alleged are not sufficiently broad to encompass all of the factual issues currently at
 14 the forefront of the case. *See Docket No. 26 at 6-7.*

15 The Court agrees with Plaintiff that good cause exists to modify the scheduling order as required
 16 by Rule 16(b). In particular, the dispute regarding the scope of Plaintiff's claims came to a head on
 17 October 10, 2016, only two days before the deadline to amend the pleadings. *See Docket No. 20 at 6-7.*
 18 At that time, Defendant's position was crystalized that the initial complaint was not sufficiently broad
 19 to encompass the issues being disputed. *See id.* Plaintiff then prepared and filed the motion for leave
 20 to amend within a few weeks. *See Docket No. 19.* These circumstances establish that Plaintiff was
 21 diligent in seeking leave to amend, such that "good cause" exists under Rule 16(b).

22 Having determined the "good cause" requirement in Rule 16(b) has been satisfied, the Court
 23 turns to the considerations in Rule 15(a) as to whether leave to amend should be granted. In this case,
 24 Defendant does not dispute that the liberal standard of Rule 15(a) has been met here. *See Docket No.*
 25 *26 at 13-15* (arguing only that the motion to amend was untimely). Given the "extreme liberality" with
 26 which Rule 15(a) is applied, the Court agrees that amendment is proper in this case.

27 //

28 //

IV. CONCLUSION

For the reasons discussed more fully above, the motion to amend the complaint is **GRANTED**.

Pursuant to Local Rule 15-1, Plaintiff shall file and serve the amended complaint no later than December 9, 2016. The motion to compel discovery is **DENIED** without prejudice, and counsel shall reevaluate the propriety of the discovery at issue in light of the allegations in the amended complaint.

IT IS SO ORDERED.

DATED: December 2, 2016


NANCY J. KOPPE
United States Magistrate Judge